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The EU Will Not Be Able to Enforce the UN Arms Embargo in Libya

Markus Kaim and René Schulz

On 19 January 2020 a high-level conference was held in Berlin to find solutions to the conflict in Libya between the unity government under Fayez al-Sarraj and the troops led by General Khalifa Haftar. A central agreement in the final declaration aims to stop the unimpeded influx of weapons that external actors are making available to the warring parties. The conference participants committed themselves to “unequivocally and fully respect and implement the arms embargo established by United Nations Security Council Resolution 1970 (2011) and the Council’s subsequent resolutions, including the proliferation of arms from Libya, and call on all international actors to do the same”. The declaration thus reaffirms the existing resolutions, revealing its basic problem: So far, the United Nations (UN) has not been able to effectively enforce the current embargo for a variety of reasons.

Following the Berlin Conference, the EU has announced that, in the coming weeks, it will work out options as to how the decisions made in Berlin can be implemented and what contribution Europe can make to this. Following discussions between European Union (EU) foreign ministers on 20 January, EU Foreign Affairs Commissioner Josep Borrell said that one of the aims of the mission is to monitor compliance with the arms embargo from sea by means of the EU maritime mission “Sophia”, which has been operating on a limited scale since April 2019. This measure is to be embedded in a larger EU military mission to monitor the agreed ceasefire. The EU’s Political and Security Committee is now working out concrete steps. German politicians, too,

have cautiously expressed their support for such an EU mission and declared that they are open to participation by the Bundeswehr.

The Problem of Uncontrolled Arms Transfers

The starting point of the considerations made at the Berlin Conference and by the EU, respectively, is a depressing analysis of the conflict in Libya. The country has finally become the venue for a proxy conflict since Turkey began supplying weapons to the government in Tripoli in May 2019. In this context, Libya also became a kind of testing ground for foreign military equipment. The United Arab Emirates (UAE) and



Egypt have consistently provided massive levels of support for General Haftar since 2014, whereas his opponents received no foreign support between 2016 and 2018. In violation of the UN arms embargo imposed on Libya and with considerable consequences for the security of the country and the region, foreign actors have smuggled drones, armoured personnel carriers, and sophisticated missile systems into Libya in addition to small arms.

In the course of the 2011 revolution, militias looted the Gaddafi regime's stocks of light weapons. Since then, the proliferation of weapons has been a security problem for Libya and its neighbours. Between the end of 2011 and 2013 in particular, such weapons also reached the Sahel, the rest of North Africa, and the Levant. The spread of these weapons exacerbated instability in countries such as Syria and Mali, which were also affected by conflict. With the outbreak of civil war in 2014, Libya became one of the major arms importers and has remained so ever since.

The offensive launched by Haftar against Tripoli in the spring of 2019 led to a resurgence of civil war, and state arms deliveries to the warring parties intensified. Today, according to the UN, the UAE, Egypt, Jordan, and Russia support General Haftar's "Libyan Arab Armed Forces". Turkey, for its part, provides military support to the UN- and EU-recognised government in Tripoli, as well as to the allied militias that have joined forces against Haftar. As a result of this internationalisation of the conflict, military equipment reaches Libya by air, land, and sea.

The fact that armed non-state groups in Libya are trained on these weapons systems and use them has dangerous consequences not only for this country. As in Afghanistan in the 1990s and 2000s — or in the Sahel in the 2010s — fighters from other armed groups could come to Libya to receive the appropriate training. However, a possible development emanating from Libya also presents a threat: Between 2012 and 2014, terrorists and separatist groups filled their arsenals with Libyan weapons; now weap-

ons from Libya could, in turn, penetrate into neighbouring countries, a number of which are increasingly struggling with insurgencies fuelled by the so-called Islamic State (IS) and al-Qaida.

It is now doubtful whether the optimism at the Berlin Conference that the embargo could really be enforced was justified. According to the UN, the arms embargo reaffirmed at the Berlin Conference has since been broken by several summit participants. In the weeks that have passed since the conference, several planes have landed at airports in western and eastern Libya, bringing weapons, armoured vehicles, fighters, and advisers into the country. In its statement of 25 January 2020, the UN Support Mission in Libya (UNSMIL) did not name any responsible parties and thus left it open as to who had broken the embargo. However, it noted that "several who participated in the Berlin Conference" had been involved in the "ongoing transfer of foreign fighters, weapons, ammunition and advanced systems" and other military equipment.

The Arms Embargo

Already in February 2011, the UN Security Council decided "that all Member States shall immediately take the necessary measures to prevent the direct or indirect supply, sale or transfer to the Libyan Arab Jamahiriya, from or through their territories or by their nationals, or using their flag vessels or aircraft, of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical assistance, training, financial or other assistance, related to military activities or the provision, maintenance or use of any arms and related materiel, including the provision of armed mercenary personnel whether or not originating in their territories". Further sanctions complement the arms embargo and are monitored by a committee of the UN Security Council estab-

lished in the wake of Libya's 1970 resolution (2011). In 2020, Germany holds the chair of this committee.

In addition, the Security Council has authorised UN member states on several occasions, most recently in June 2019, to monitor compliance with the arms embargo, individually or through regional organisations. Vessels for which there are reasonable grounds to believe they are carrying arms or related materiel to or from Libya are to be inspected off the coast of Libya. There are no comparable explicit authorisations for the control of land routes or airspace. In March 2011, the Security Council also established a panel of experts to examine the extent to which the arms embargo imposed on Libya is being respected. In its extensive and very detailed final report of 29 November 2019, the panel concludes that the embargo has remained largely ineffective. Both parties to the conflict had been supplied with weapons and military equipment and provided with technical support. Some of the main governments responsible are explicitly named: According to the experts' assessment, Jordan, Turkey, and the UAE routinely supplied arms and did not even make any special effort to conceal such supplies.

The monitoring and control of arms flows by the UN may not be complete, and certainly the provision of information by member states could be improved. Nevertheless, the UN has a fairly good overall view thanks to the expert panel reports. It is all the more surprising that in the days following the Berlin Conference, some German and European politicians called for the EU to "monitor" the arms embargo against Libya. Instead, however, the priority would be to "enforce" the embargo.

In principle, the embargo could be enforced in two ways: either by the Security Council imposing sanctions on actors who supply weapons to the warring Libyan parties, or by preventing such supplies by military means.

Enforcement through Sanctions

Although the UN experts have presented thoroughly investigated evidence of violations of the embargo, it is unlikely that the members of the UN Security Council will agree on appropriate sanctions. This is because external actors (including members of the Security Council, namely Russia and France) are pursuing different interests in Libya and have little confidence that sanctions can be implemented impartially on an international level. But only under this condition would they possibly be willing to cooperate in the enforcement of the embargo. Those states that support warring parties do not currently expect others to adhere to the embargo. Accordingly, none of them wants to reduce the chances of victory for their allies.

Sanctions directed against individuals or companies would also have to be decided by the UN Security Council, whose members are also pursuing divergent interests. In the case of Libya, too, its permanent members are likely to use their right of veto. For example, one of the most obvious addressees of sanctions would be the UAE. However, given the proximity of the UAE to the United States, for example, which has armed forces stationed in the country, it seems unlikely that the Trump administration is prepared to jeopardise bilateral relations by imposing sanctions on the UAE.

The EU would, of course, be free to decide on its own sanctions that go beyond the UN sanctions. On the one hand, however, its member states would have to develop a cohesive Libya policy; on the other hand, it is questionable whether the EU has the impartiality and credibility necessary for this. In June 2019, for example, US anti-tank missiles from French stocks were found on a base commanded by General Haftar. Paris denied supplying Haftar with the missiles at the time. France had therefore not violated the current arms embargo. The missiles had only served for the self-protection of a French contingent that had carried out a reconnaissance mission in Libya in the fight against terrorism.

Enforcement by Coercive Military Measures

In the European debate, there are some voices in favour of enforcing the arms embargo through coercive military measures. This could be achieved either through a maritime component alone, so the expectation is, or additionally by controlling land routes and Libyan airspace. From a military perspective, the following measures would have to be taken.

Sea routes: Libya's coastline is more than 1,700 km long. In order to be able to monitor the coastal waters off the land, at least two frigates would have to be permanently in service in these waters. Since scheduled port calls have to be taken into account, in practice this would mean the deployment of three to four frigates. For searching suspicious ships, so-called boarding teams would be necessary, which would be transferred to the ships either by helicopter or with the help of speedboats.

The current European discussion on the revival of the EUNAVFOR MED operation "Sophia" highlights another problem. The monitoring and enforcement of the arms embargo has been part of the mandate of "Sophia" since 2016, along with the fight against smuggling. This order was also carried out by the Bundeswehr in 2017. On 1 May 2017, the Bundeswehr, with Lithuanian support, searched a ship for the first time — the motor vessel *El Mukthar*, flying the Libyan flag — and confiscated various weapons in the process.

In practice, however, it will hardly be possible to separate the mandate to enforce an arms embargo from the rescue of refugees at sea. The revival of the operation with the aim of enforcing the arms embargo would be, from a European perspective, a return to the situation before June 2019, when "Sophia" was suspended because the question about the distribution of distressed refugees rescued at sea had not been resolved.

Airspace: Unlike the North Atlantic Treaty Organization (NATO), the EU does not have

its own means of airspace surveillance. Therefore, only individual EU member states could support a NATO operation with their own capabilities, for example with air-to-air refuelling aircraft. Airspace surveillance would have to be handled by AWACS aircraft of the alliance. It would still have to be clarified how secure the airspace over Libya is. As an accompanying measure, a no-fly zone would therefore have to be established. To ensure safety in the Libyan airspace and enforce the no-fly zone, fighter planes and ships would have to be deployed. Unlike the international military mission in Libya in 2011, there is currently no discernible political will to take such a measure, let alone a coalition of the willing to implement it. The effort involved in operation "Unified Protector" in 2011 was enormous: In the first two months of the operation alone, the contingents of the 16 participating states had flown more than 4,500 sorties — including more than 1,800 strike sorties — and stopped 740 ships to enforce the arms embargo and no-fly zone. Apart from that, such a mission would currently bring the participating EU members into confrontation with NATO partner Turkey.

Land routes: In principle, the arms embargo cannot be effectively enforced without land forces — this is also the greatest obstacle to such a mission. At least a five-figure number of soldiers would be required to monitor a national border that is more than 4,300 km long and shared with six states. Apart from the fact that these soldiers would have to protect themselves in a country engaged in civil war, their task of securing the national borders would be made more difficult by the fact that some neighbouring countries are among the arms suppliers. Even if the EU were to provide only a portion of the troops for an international mission, such a number of soldiers is politically inconceivable at present, as is the necessary use of scarce resources such as helicopters and drones. Last but not least, the host country would have to give its consent, and this might be expected from the internationally recognised official

government of Libya, but probably not from General Haftar, who controls a large part of Libya with his troops. This would not be necessary under international law, but politically it would probably be unavoidable. In order to enforce the arms embargo at the country's border or at airports in Libya, an extended and more robust UN mandate is also needed, which Russia and the United States will certainly not allow as permanent members of the UN Security Council due to their respective specific interests and allies.

Apart from military requirements, the question arises of how to deal with violations of a militarily enforced arms embargo. Destroying found weapons is still the easiest to achieve, but the mandate should clearly define and coordinate responsibilities at the European level. It would also be important to put the transporters of delivered weapons on a black list, as was done in 2018 in the case of North Korea, for example. Dealing with the arms smugglers themselves is problematic, as they cannot be charged before an international court because international law only applies to states and international organisations, not to natural persons. Furthermore, the will to act internationally is only partially apparent. In any case, it seems more than questionable whether EU governments will authorise their armed forces to forcibly stop, for example, arms supplies from Russian or Turkish companies that have been at least encouraged, if not mandated, by the governments in Moscow and Ankara. This would potentially lead to far-reaching political disputes with actors and allies on whose cooperation the EU is dependent in other policy areas.

Conclusions

There are no easy, low-cost, and fully promising options for the EU to enforce the current arms embargo in Libya. All options entail political, financial, and military costs, some of them considerable.

Option 1: Full Enforcement of the Arms Embargo

It is true that the military conditions that must be fulfilled for the effective military enforcement of the arms embargo could theoretically easily be identified. However, no EU member state has indicated that it is prepared to participate in such a large-scale military operation. Political considerations play just as much of a role here as the reluctance to engage in a military operation that would involve considerable risks. In particular, efforts to effectively stop deliveries by land and air would require significant resources in an unpacified environment. At the same time, experience with comparable international missions teaches us that troops must remain in Libya – probably for several years, if not decades – until the conflict has been permanently settled politically. It is therefore not surprising that the maritime component, in particular, is at the centre of European debates on the enforcement of the embargo.

Option 2: “Maritime Arms Embargo”

In view of the military effort required, the most likely option appears to be to continue monitoring arms smuggling in the Mediterranean Sea with naval units and air reconnaissance. This would send a political signal of commitment while keeping military risks low. However, the effective enforcement of the embargo would be a long way off.

Even if the details are a little different, a parallel emerges: the UNIFIL II operation off the coast of Lebanon, which has been ongoing since 2006. Since the end of the Lebanon War in 2006 – the fighting between Hezbollah and Israel – this maritime UN mission with German participation has been supporting the Lebanese armed forces with coastal protection. The mission, which has a robust mandate, is designed to stop arms smuggling off the coast of Lebanon and to control the sea routes. In concrete terms, the aim is to prevent arms and other

military equipment from being brought into Lebanon without the consent of the Lebanese government. However, the control of land routes is so patchy that there is no real prospect of effectively stopping arms smuggling into Lebanon.

Some EU members would certainly also object that a similar mission in Libyan waters would lead to an increase in the number of distressed migrants who need to be rescued, as in the earlier operation “Sophia”. This could be countered with European support for the NATO-led maritime security operation “Sea Guardian” in the Mediterranean, which includes among its tasks the fight against arms smuggling in the maritime environment. This approach would at the same time strengthen the European pillar in NATO and give the sceptics among the EU member states scope for participation.

Another aspect is also important: An arms embargo monitored by sea would be one-sided in its consequences and be perceived by Libyan conflict actors as political partisanship. This would make it more difficult for the government in Tripoli (which has no secure airports and no allied neighbours) to obtain weapons from Turkey. The “Libyan Arab Forces,” on the other hand, would still have no problems receiving support by land or air. Such a maritime arms embargo would therefore be a measure that would give General Haftar a military advantage. This would probably also be the intention of some EU member states such as France and Greece. However, it would be highly problematic in view of Germany’s priority to strengthen the government in Tripoli.

Option 3: Use of Sanctions

A first step on the way to a settlement of the Libyan conflict is the transformation of the commitments renewed in the Berlin process into a UN resolution. As part of its membership of the UN Security Council, Germany has called on the body to adopt a resolution endorsing the conclusions of the Berlin Conference. Resolution S/RES/2510 (2020), adopted on 12 February 2020, under-

lines once again that all actors face consequences if they continue to violate the arms embargo. Permanent members of the Security Council, however, had called for a text that focussed more on the situation on the ground, with the United States pushing for the resolution to condemn Russian private military companies operating in Libya. Moscow, in turn, refused to accept such a formulation and abstained from voting. In addition, Russia had questioned whether the Council should even approve the Berlin outcome unless General Haftar confirmed his support for it. It remains uncertain whether international sanctions can actually be enforced on the basis of this resolution.

As the EU is economically strong and the European Commission has decision-making powers in this area, punitive tariffs or restrictions on access to the European internal market for countries from which arms are exported to Libya could be envisaged. That foreign and security policy goals can, in principle, be effectively accomplished with the help of economic policy measures is shown by the current action of the American government in the dispute with Germany, France, and the United Kingdom over a common Iran policy. Nevertheless, such measures are likely to mean an open confrontation with those EU member states involved in the Libyan conflict.

A second option would be economic sanctions. The dependence of the Turkish economy, in particular, on the EU is obvious and offers powerful leverage when dealing with President Recep Tayyip Erdoğan. Economic sanctions would also have an indirect effect on the EU member states involved in the conflict. For a sanctions policy can only be implemented if the EU member states adhere strictly to the UN arms embargo. But even in this context, it must be taken into account that the leading EU member states are not willing to risk a conflict with Egypt and the UAE because of Libya. Thus, even if the EU members were to agree on sanctions against Turkey, the EU would still have no means of exerting pressure that could have an effect on the other central conflict actors.

Despite the difficulties involved in enforcing the arms embargo, the EU should also consider the consequences of its failure to act. Unlike individual EU member states, the EU is not a relevant actor in the Libyan conflict. If, however, it accepted that it had no realistic possibility of enforcing the arms embargo in view of the restrictions outlined above, the EU would be sending out a disastrous signal in two respects.

Firstly, the EU would be giving up its claim to act as an influencing power in its own neighbourhood. The structures and instruments it has developed for crisis management have remained ineffective. The EU would continue to be affected by the consequences of the Libyan conflict (further destabilisation of North Africa; migration movements; strengthening of terrorist groups) but unable to influence them. In addition, the political momentum of the Berlin Conference would fizzle out without having had any impact.

Secondly, the EU would also be blatantly failing in view of the changing geopolitical realities that will shape the coming years. The United States, under President Donald Trump, has made it clear that the Libyan Civil War and its consequences do not enjoy foreign policy priority. Libya is thus a result, and at the same time a symbol, of the withdrawal of the United States from world politics. Other actors are currently filling the gap left by the United States, both politically and militarily. In this respect, Libya is also a warning sign for the global role of the EU and its willingness to shape world politics.

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